IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.5847 of 2005

M/s.Vinsons Projects (I) Pvt.Ltd. Petitioners
Vs.
The State of Maharashtra & ors. Respondents

Mr.V.A.Thorat, Sr.Counsel with Mr.Vaibhav Sugdare i/b. Mahimtura & Co. for petitioners.

Mrs.M.P.Thakur, AGP for resp.no.1.

Mr.G.D.Utangale i/b M/s. Utangale & Co. for resp. nos.2 and 3.

Dr.Virendra Tulzapurkar, Sr.Counsel with Mr.Birendra Saraf, Mr. V.P.Sawant and Mr.Subhash Jadav for resp.no.4.

Mr.S.G.Surana for resp.no.5.

CORAM: B.H.MARLAPALLE & NARESH H.PATIL,JJ.

October 04, 2006.

P.C.

1. Heard Mr.Thorat, the learned Senior Counsel with Mr.Sukhadare, the learned counsel for the petitioner - company, Dr. Tulzapurkar, the learned Senior Counsel with Mr.Saraf i/by M/s. Utangale & Co. for the respondent no.4 and Mr. Surana for respondent no.5. The respondent nos.2 and 3 have also filed affidavit-in-reply and we have perused the same. The challenge in this petition is to the order dated 27/4/2005 passed by the Principal Secretary,

Housing Development, Government of Maharashtra.

2. It appears that initially respondent no.4 was granted the letter of intent by respondent nos.2 and 3 for the development of the subject slum rehabilitation scheme on plot nos.463, 464 and 465 of Vidyavihar (East), Kirol village by following the due procedure as set out under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("the Act" for short). The said respondent appears to have commenced the construction which envisaged three multi storeyed buildings. The respondent nos.2 and 3 claim that a show cause was issued on 15th March 2004 against the respondent no.4 on the ground of alleged illegal commencement of construction and the failure to pay penalty charges for regularisation of the said construction. It is further stated that the construction was proceeded further beyond the approvals and the commencement certificate and on failure to reply the show cause notice the LOI was cancelled. It was granted in favour of the present petitioner on 10/1/2005 when the work of "A" Wing of rehabilitation upto 7th floor was regularised. This LOI granted in favour of the petitioner was sought to be agitated by the respondent no.4 before the

Principal Secretary, Housing Development, Government of Maharashtra and the said authority was pleased to stay the LOI by his order dated 19/1/2005. By the impugned order the said stay has been vacated and it shows that the parties were heard and it was noted that the "A" tower was completely constructed and the construction in "B" tower was completed upto 90 per cent. 30 of the eligible slum dwellers were rehabilitated and 54 others were provided with alternative accommodation in the intervening period. It was further noted that cancellation of LOI granted in favour of the respondent no.4 and granting LOI in favour of the present petitioner on 10/1/2005 was in breach of the principles of natural justice.

3. It was submitted by Mr.Thorat that the power exercised by the Principal Secretary while passing the impugned order is beyond the scope of Section 3K of the Act and, therefore, the same is without authority in law. He further submitted that when respondent no.2 is an authority created under the Act and the Act being a full Code providing the remedy for settlement of disputes, the impugned order cannot fall within the ambit of "directions to be given by the State Government", in asmuchas the State

Government did not have the powers to set aside the LOI granted in favour of the petitioner on 10/1/2005.

4. We have noted that by the impugned order the stay order passed on 19/1/2005 came to be vacated and the respondent no.4 was allowed to continue with further construction. On the point of cancellation of LOI granted originally in favour of the respondent no.4, the learned counsel for the respondent nos.2 and 3 on instructions conceded that such a specific order of cancellation was not passed at any time before granting LOI in favour of the present petitioner on 10/1/2005. It was further claimed that the show cause notice dated 15/3/2004 was not replied to within 15 days and, therefore, it ought to be deemed that when the petitioner was issued LOI on 10/1/2005, the LOI granted in favour of the respondent no.4 stood cancelled. Whether show cause notice dated 15/3/2004 was replied to or not is an issue we do not deem it appropriate to go into at this stage save and except to note that the LOI granted in favour of the respondent no.4 was not at any point of time cancelled or stayed before granting LOI to the petitioner on 10/1/2005. Both the parties have relied upon an order passed by a Division bench

of this Court in Writ Petition No.5068 of 2005 which examined the scope of Section 3K of the Act and observed thus in para 10:

> "10. As far as the present scenario is concerned, Section 3K is quite wide as we have seen. It is undoubtedly true that in day-to-day functioning, the State Government is not expected to interfere. At the same time, in the present case, what has happened is that on facts the action of the SRA in entertaining the application of the 1st petitioner before disposing of the pending one of Respondent no.5, was clearly contrary to the Scheme of development as interpreted by this Court. That being so, the Secretary (Housing) was clearly within his powers and he has rightly set aside the entertaining of the application of the Petitioner by SRA."

. In the instant case the LOI granted in favour of the respondent no.4 way back in 1998 and on the basis of which construction was in progress was not cancelled and without doing so the petitioner was favoured with LOI on 10/1/2005 on the basis that the

respondent no. 5 - Society had cancelled its agreement with respondent no.4 and, therefore, in this peculiar situation the State Government thought it fit to intervene and the impugned order was passed after hearing all the parties concerned. We, therefore, do not find any reason to hold that the said order is, prima facie, lacking the statutory powers under the Act.

5. Even if it is presumed that the petitioners made out a case for reconsidering the scope of Section 3K of the Act, it need not be done so in the instant petition when the agreement signed in favour of the petitioner no more subsists and the respondent no. 5 - Society has now approached some other builder as has been contended in Writ Petition Lodging No. 2041 of 2006 filed on the Original Side of this Court and which has been tagged with this petition.

6. The respondent no.4 in its affidavit has clearly stated that as in June 2006 construction of two buildings "A" and "B" was completed and the development of the third building was in progress, out of 196 slum dwellers which included 16

shopkeepers, 106 have been given possession in the two buildings completed and thus remaining 74 slum dwellers remain to be given the possession of their respective tenements. The affidavit filed by respondent no.2 in this regards states:

> "... I say that in the present case the Society has removed the Respondent No.4 and appointed the Petitioner. Based on the said representation, the fresh Letter of Intent was issued in favour of the Petitioner. However, Respondent No.5 Society terminated the petitioner as developer and again re-appointed Respondent No.4 as developer as per it's General Body Resolution dated 23-01-2005. Respondent No.4 and 5 represented the Respondent no.6 and the Respondent no.6 has given approval in favour of Respondent no.4 i.e. Dhanshree Land Developers Pvt. Ltd. to complete the project. Now the Respondent No.4 i.e. Dhanshree Land Developer Pvt. Ltd. have changed the name of their firm to M/s. Parasmani Construction Pvt. Ltd. The Respondent No.5 vide it's General Body Resolution dated 11-09-2005, have confirmed

the appointment of M/s. Parasmani Construction Pvt. Ltd. (Previously M/s. Dhanshree Land Developers Pvt. Ltd. i.e. Respondent No.4). The society i.e. Respondent no.5 has submitted 70 % individual agreements with the developer i.e. Respondent No.4 and due to pendency of the court proceeding the proposal is pending with this Respondent for further approval."

. Writ Petition Lodging No.2041 of 2006 on the Original Side has been filed by Shri Sitaram Narayan Patil, one of the members of the respondent no.5 - Society and it is claimed that Jagrut Rahiwasi Samiti has put up a fresh proposal before the respondent nos.2 and 3 on 1st August 2006 praying not to sanction any development plan and LOI in favour of the respondent nos.4 to 9 in the said petition and respondent no.9 is the present petitioner whereas the respondent no.7 is the present respondent no.4. The petitioner Shri Patil prays to grant LOI in favour of respondent no.11 i.e. M/s. S.P. Construction Company. It is thus clear that on the one hand the respondent no.4 claims that the construction of the third multi storeyed building is in progress, some of

the members allege that the society or majority of the members have decided to go with another builder. These questions cannot be decided by us and it is for the respondent nos.2 and 3 to examine all the issues in discharge of their duties as the statutory authorities and in keeping with the provisions of the Act and the policy of the State Government as announced from time to time including the circulars issued by the respondent no.2 or the State Government.

7. We, therefore, direct that the respondent nos.2 and 3 shall examine the credentials of 106 allotees as claimed by respondent no.4 in respect of buildings "A" and "B" and if some of them or any one of them is found to be an alien or a new entrant undoubtedly the respondent no.2 shall cancel such an allotment. So far as the construction of the third building is concerned, the respondent no.2 shall hear all the parties concerned i.e. respondent nos.4, 5 and the petitioner in the Original Side Writ Petition Lodging No.2041 of 2006 and decide whether the respondent no.4 should continue with the further construction on remittance of penalty charges or otherwise but in any case it must be ensured that the

construction of the third building is not stalled and is completed expeditiously so that the remaining slum dwellers are rehabilitated. This exercise by the respondent nos.2 and 3 should be completed as expeditiously as possible and preferably before 31st December 2006 and in keeping with the provisions of the Act as well as the guide-lines issued by it or by the State Government from time to time.

8. The petition is disposed off in terms of the above directions.

(NARESH H. PATIL,J.) (B.H.MARLAPALLE